IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

Crl.L.P..No. 529 of 2007()

CC.1254/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT.-II(MOBILE), KOTTAYAM

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PETITIONER/COMPLAINANT

GEORGE T. POTTAMKULAM,
MANARAKAYAM, KANJIRAPPALLY-686507.

BY ADVS. SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS: ACCUSED AND THE STATE

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1. SOJ MANNAMPLACKEL,
KERALA GOLD JEWELLERY,
419/47. M.T.H.ROAD, AMBATTUR O.T.,
CHENNAI- 600 053.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL.L.P. NO. 529 OF 2007

Dated this the 1st day of August, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.1254 of 2004 on the file of the Judicial First Class Magistrate's Court-II (Mobile), Kottayam.

2. The case of the petitioner - complainant was that towards discharge of an amount of Rs.42,00,000/- the first respondent - accused issued Ext.P1 cheque dated 6.10.2003 in favour of the petitioner which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the accused. After complying with the statutory provisions regarding notice etc, and finding that the amount covered by Ext.P1 cheque has not been repaid, the petitioner filed the complaint against the accused alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). To prove the case against the accused, the complainant and the Manager of the bank were examined as PWs.1 and 2 respectively and Exts.P1 to P12 were produced. On the side of the defence, the accused was examined as DW.1 and Exts.D1 to D5 were

produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. He denied the allegations levelled against him and stated that a loan of Rs.45,00,000/- was obtained from the South Indian Bank by mortgaging the property of the complainant for the purpose of the partnership concern, Sindhoor Jewellery and that Ext.P1 cheque drawn on the account maintained by the partnership concern was issued as security. He further stated that the complainant and himself were the partners of the said concern. After considering the entire evidence, the trial court found that the petitioner - complainant failed to prove that Ext.P1 cheque was issued by the accused and that even if any liability was attached to Ext.P1, the complainant also was responsible for the same and hence, acquitted the accused.

3. Learned counsel appearing for the petitioner submits that as per Section 141 of the Act, the Managing parter or the person who is in charge of the business is responsible for the issuance of the cheque maintained by the firm and that being so, the first respondent is responsible for Ext.P1 cheque. Counsel further submits that the reply given by the first respondent would show that he was managing the affairs of the partnership firm and hence he alone is liable for the issuance of Ext.P1 cheque.

4. This Court considered the arguments of the learned counsel appearing for the petitioner as well as the impugned judgment. The petitioner - complainant had admitted that he was one of the partners of the firm. It is to be noted that though all the partners including the complainant were made parties to the complaint, the firm Sindhoor Jewellery was not made a party to the complaint. Further, PW.2, the Manager of the bank had given evidence to the effect that the account was opened at the instance of the complainant and that the account belongs to Sindhoor Jewellery. There is no evidence to show that the first respondent was the nominated partner of the firm so as to make him liable for the cheque issued by the firm. Even if it is accepted, for argument's sake, that the appellant - complainant was only a sleeping partner and hence not liable for the cheque issued from the account maintained by the firm, there is no evidence to establish that the entire assets of the firm was managed by the accused - first respondent alone. In the above circumstances, this Court is of the view that the court below was justified in acquitting the accused. The impugned judgment, therefore, requires no interference

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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